

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

EMZILE LEE WILBURN,

Plaintiff,

vs.

CITY OF ST. LOUIS, et al.,

Defendants.

)
)
)
)
)
)
)
)
)
)

Case No. 4:08-CV-854 AGF

ORDER

This matter is before the Court upon the application of Emzile Lee Wilburn for leave to commence this action without payment of the required filing fee.

Title 28 U.S.C. § 1915 (g)

Title 28 U.S.C. § 1915(g) provides that a prisoner may not bring a civil action in forma pauperis if “on 3 or more [earlier] occasions, . . . [the prisoner has] brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.”

Discussion

Plaintiff may not seek to bring the instant action in forma pauperis pursuant to 28 U.S.C. § 1915. A review of this Court’s files indicates that this Court has previously dismissed three of plaintiff’s cases as frivolous or for failing to state a claim upon which relief may be granted. See Wilburn v. City of St. Louis, No. 4:07-CV-2043 MLM (E.D. Mo.); Wilburn v. St. Louis City Justice Center, No. 4:07-CV-1444 DJS (E.D. Mo.); and Wilburn v. Friscella, No. 4:07-CV-705 RWS (E.D. Mo.). Furthermore, a review of the complaint indicates that plaintiff is not under “imminent

danger of serious physical injury.” Because plaintiff has had three or more previous actions or appeals dismissed as frivolous or for failing to state a claim, he must pay the full \$350 filing fee. See In re Tyler, 110 F.3d 528 (8th Cir. 1997).

Accordingly,

IT IS HEREBY ORDERED that plaintiff is **DENIED** leave to commence this action without payment of the statutory filing fee [Doc. #2].

IT IS FURTHER ORDERED that plaintiff shall have thirty (30) days from the date of this order to pay the \$350 filing fee.

IT IS FURTHER ORDERED that if plaintiff fails to pay the filing fee within thirty (30) days, the Court will dismiss this action. See Rule 41(b) of the Federal Rules of Civil Procedure.

Dated this 23rd day of June, 2008.

/s/ Jean C. Hamilton
UNITED STATES DISTRICT JUDGE